STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION	DOCKET NO. RMU-03-2

ORDER PROVIDING STATEMENT OF PRINCIPAL REASONS FOR AND AGAINST RULE ADOPTED

(Issued September 5, 2003)

On July 18, 2003, the Utilities Board issued an order in Docket No. RMU-03-2, adopting amendments to 199 IAC 19.4(15)"h"(3) and 20.4(15)"h"(3). The amendments change the format of the prescribed standard notice that is sent to customers to inform them of their options to avoid disconnection of their natural gas and electric service for nonpayment. The "Adopted and Filed" notice was published in IAB Vol. XXVI, No. 3 (8/6/03), pp. 229-234, as ARC 2681B. The adopted amendments are designed to make the notice more understandable to the customer and to ensure the notice is consistent with the Board's rules on disconnection of gas and electric service.

On August 14, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an "Application for Statement of Principal Reasons For and Against Rule Adopted" pursuant to Iowa Code § 17A.4(1)"b". Specifically, Consumer Advocate requests a statement of the principal reasons for and against adoption of the last sentence of paragraph 3.c of the adopted notice.

Paragraph 3.c provides: "To avoid disconnection, you must apply for energy assistance before your service is shut off. Notify your utility that you may be eligible and have applied for energy assistance. Once your service has been disconnected, it will not be reconnected based on approval for energy assistance."

Consumer Advocate's position

Consumer Advocate points out that the last sentence in 3.c was not included in the proposed amendments published by the Board on February 5, 2003, in IAB Vol. XXV, No. 16 (2/5/03) pp. 1079-83, as ARC 2285B. MidAmerican Energy Company (MidAmerican) suggested adding the last sentence in its written comments and the Board in the July 18, 2003, order agreed with the suggestion, stating "The Board understands that some LIHEAP eligible customers may think that qualifying for LIHEAP will get disconnected service reconnected. This is not correct, and the Board will revise the notice to add two sentences to make this point." One of the sentences added is the last sentence in paragraph 3.c.

Consumer Advocate states that it commented during the oral presentation on April 8, 2003, that MidAmerican's proposal appeared to be inconsistent with the Board's declaratory ruling in Docket No. DRU-02-2, Refusal of Service to Relocating LIHEAP Customers, issued April 9, 2002. Consumer Advocate points out that the Board did not address this comment in the July 18, 2003, order.

Consumer Advocate contends that the Board's decision in its "Declaratory Order" in Docket No. DRU-02-2 contradicts the language in paragraph 3.c. In that order, the Board stated:

> The issue raised by this request for a declaratory order is whether a utility can deny electric or gas service at the subsequent residence of a qualified head of household owing a bill who changes residences during the moratorium period. The analysis must focus on the meaning of the word 'disconnection' in both the statute and the rules. The Random House Dictionary of the English Language, 2nd Ed., Unabridged (1987), includes the definition 'state of being disconnected; lack of connection.' The Board believes that is the appropriate definition to apply to 'disconnection' in the statute and the subrules. Other definitions that emphasize the act of disconnecting and not the state of being disconnected are inconsistent with the purpose of the statute, which is to protect the health and safety of the persons living at the residence of the LIHEAP-qualified head of household during Iowa winters. The effect of the application of that definition to the Board's subrules is to prohibit the utility from refusing service during the moratorium to a residence of a qualified head of household, because to do so would leave the residence in a state of being disconnected or lacking connection.

Consumer Advocate states that in its declaratory order, the Board observed that the issue presented in Docket No. DRU-02-2 was distinguishable from the question of whether a new customer who is certified as head of household has to be given service, an issue previously addressed by the Board in Docket No. DRU-90-2, "Declaratory Ruling" (March 16, 1990). The Consumer Advocate states that it agrees with the Board's observation in Docket No. DRU-02-2, that the language in Docket No. DRU-90-2 concerning lack of utility obligation to reconnect service for a newly

qualified LIHEAP head of household is inconsistent with the principle established in Docket No. DRU-02-2. Consumer Advocate asserts that the definition of disconnection approved in Docket No. DRU-02-2 pertains to the state of being disconnected rather than the physical act of disconnection, and in adopting the definition the Board correctly advances the important purpose of Iowa Code § 476.20 to protect the health and safety of persons living at the residence of the LIHEAP qualified head of household during Iowa winters. Consumer Advocate argues that it would be inconsistent to allow a utility to refuse service to a newly-certified LIHEAP customer during the winter moratorium under the Board's reasoning in Docket No. DRU-02-2.

Consumer Advocate states that, consistent with the purpose of the LIHEAP program and the decision in DRU-02-2, it supports an interpretation of § 476.20 under which utilities would be required during each winter moratorium period to reconnect each certified LIHEAP customer who was physically disconnected by the natural gas or electric utility during, or within the 30-day period immediately preceding, that same winter moratorium. Consumer Advocate concludes that the last sentence of paragraph 3.c is inconsistent with this established Board precedent.

Consumer Advocate also states that the addition of the last sentence to paragraph 3.c does not constitute a permissible variance from the proposed rules; that is, the new language is beyond the scope of the Board's authority in this docket.

Subrule 199 IAC 3.9(2) permits the Board to adopt a provision that differs from the provision proposed in the "Notice of Intended Action" in the following situations:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in the Notice;

b. The differences are a logical outgrowth of the contents of the Notice and the comments submitted in response thereto;

c. The Notice indicated that the outcome of the rule making could be the rule in question;

d. The differences are so insubstantial as to make additional notice and comment proceedings unnecessary; or

e. As otherwise permitted by law.

Consumer Advocate argues that the issue of whether the Board should depart from the precedent of Docket No. DRU-02-2 was not within the scope of the Notice, nor does MidAmerican's written proposal address the decision in Docket No. DRU-02-2. Consumer Advocate maintains that the last sentence in paragraph 3.c of the adopted standard notice does not satisfy the criteria for a permissible variance between adopted rule and proposed rule and the Board did not evaluate whether the adopted language constitutes a permissible variance under subrule 3.9(2).

Consumer Advocate requests a statement of the principal reasons for and against the adoption of the last sentence in paragraph 3.c, including the Board's reasons for overruling the decision in Docket No. DRU-02-2 and requests the Board make a determination on whether the language constitutes a permissible variance. Consumer Advocate requests that the Board defer the effective date of the adopted

standard notice if it determines that the principles in DRU-02-2 are still appropriate. In any event, Consumer Advocate suggests that the Board should revise the "Order Adopting Amendments" to eliminate the last sentence in paragraph 3.c and commence a new rule making to consider that provision.

BOARD DECISION

A. Statement Of Reasons For And Against Adoption Of Rule

As Consumer Advocate indicates, the question of whether the language proposed by MidAmerican (that qualification for LIHEAP will not result in reconnection of a disconnected customer) was discussed at the oral presentation in this docket. The discussion concerning MidAmerican's proposal to add the language to paragraph 3.c from the oral presentation is as follows:

> CHAIRPERSON MUNNS: Question 3, is that where we are?
>
> BOARD MEMBER SMITH: Yes.
>
> CHAIRPERSON MUNNS: "How do I apply for low income energy assistance?"
> There was a recommendation by MidAmerican that an addition should be once your service has been disconnected, it will not be reconnected based on approval for energy assistance. Is there any response to that?
>
> MS. EASLER (For Consumer Advocate): I have one response to that.
>
> CHAIRPERSON MUNNS: Okay.
>
> MS. EASLER: I believe that this recommendation may be inconsistent with the Board's declaratory ruling issued in Docket No. DRU-02-2. In that order, it mentioned a previous docket number, DRU-90-2, addressing the lack of utility obligation to reconnect service for a newly likely qualified head of household, and it said that that prior decision may be inconsistent with the principles

announced in DRU-02-2, so I just bring that to your attention because it appears that the proposed rule may be inconsistent with that language that you more recently issued.

CHAIRPERSON MUNNS: All right. That's not clear to me.

MS. HUIZENGA (For MidAmerican): I think I can maybe clarify. I believe--catch me if I'm wrong on this because this is just memory--that the decision there turned on the idea that it wasn't actually a disconnect, it was a move --.

MS. EASLER: That's correct.

MS. HUIZENGA: --For a LIAEP (sic) customer, and in our terms here where MidAmerican used disconnect, we're thinking of an actual disconnect, not a LIEAP move. I don't know how to fix that. If they have already been disconnected for nonpayment, if it hasn't been a voluntary "shut me off. I'm moving to a new place" type thing --.

MS. EASLER: Right, that's true.

MS. HUIZENGA: --Then this kicks in.

CHAIRPERSON MUNNS: Is the practice now that if you receive a disconnection and you go and apply for LIAEP, that there's a grace period there to see if you qualify?

MS. ANDERSON (For MidAmerican): Yes.

CHAIRPERSON MUNNS: But if you get this disconnection and you don't take that action to go and get qualified for energy assistance and the disconnection takes place and then you later go and become eligible, that there will not be a reconnection? Am I saying that correct?

MS. HUIZENGA: That's correct.

MS. ANDERSON: Yes, you are. I think it's just emphasizing the first sentence, to avoid disconnection, you need to apply first before your service is disconnected, and this is just reiterating again.

MS. HUIZENGA: Giving a sense of urgency here that something needs to be done.

CHAIRPERSON MUNNS: Okay. We'll take a look at that, this language. (Tr. pp. 46-48.)

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MR. KRINGLEN (For Iowa Legal Aid): I thought I would just mention, I hadn't noticed that before, but I'm not sure if 3.c., that sentence really makes much sense, because it says, "To avoid disconnection, you must apply before you're disconnected," essentially is what it's saying, and that is sort of, I don't know, obvious. It may be intended to be saying something important, and maybe recasting it would clear it up a little bit, but I don't know.

CHAIRPERSON MUNNS: I see what you're saying. It's not really the disconnection. It kind of gets to the issue we were getting at before. To continue to receive service, you have to apply for it before your service is cut off because once it's cut off, if you then go and apply, there's no obligation to reconnect, so, yes, it is confusing.

MR. KRINGLEN: Maybe it might say something like to be protected by the moratorium, you must apply before you're disconnected. That's what is really intended. Again, I didn't know that that's the case, and if it is the case, I'm not expressing an opinion at the moment about whether the utility can refuse to reconnect you once you go and apply. Maybe they can.

CHAIRPERSON MUNNS: That's in our other rulemaking, but it's one of those things that you can look at our declaratory rulings on it, and all these issues are always open. Do you have any more on 3? (No response.) (Tr. pp. 50-51.)

The Board, after considering all of the comments, stated in the July 18, 2003, order: "The Board understands that some LIHEAP eligible customers may think that qualifying for LIHEAP will get disconnected service reconnected. This is not correct, and the Board will revise the notice to add two sentences that make this point." The Board then added a sentence to the end of paragraph 3.b that stated, "To prevent disconnection, the utility must be contacted prior to disconnection of your service." The Board also added the last sentence to paragraph 3.c, "Once your service has

been disconnected, it will not be reconnected based on approval for energy assistance."

The Board did not provide additional discussion concerning the perceived inconsistency with the decision in Docket No. DRU-02-2, since it appeared from the transcript that Consumer Advocate agreed with the response provided by MidAmerican. MidAmerican stated that Docket No. DRU-02-2 involved a customer who is already LIHEAP qualified who moves to a new residence, while paragraph 3.c involves a customer who is first disconnected and then seeks to become LIHEAP qualified. MidAmerican stated that the LIHEAP customer who moves must be reconnected at the new residence since the customer has previously been determined to be eligible for LIHEAP and is protected from disconnection during the winter moratorium, while the customer who had already been disconnected had no remedy. Chairman Munns sums this up in the transcript when she indicates that the customer who is disconnected will not be reconnected. Consumer Advocate did not express any disagreement with this summary. However, based upon the filing made by Consumer Advocate, it appears Consumer Advocate now disagrees with the summary offered at the oral presentation.

Consumer Advocate is correct that the Board's decision in Docket No. DRU-02-2 does contain a reference to the prior Board decision in Docket No. DRU-90-2 and makes the statement that "[W]hile the Board is not reaching the fact situation in Docket No. DRU-90-2, in this order, it appears that the language in that

declaratory ruling concerning lack of any utility obligation to reconnect service for a newly LIHEAP-qualified head of household may be inconsistent with the principle established in this declaratory order."

The language concerning the prior decision was not a ruling by the Board. It was a statement identifying a potential conflict between two declaratory orders. This conflict was not addressed or resolved in the declaratory order in Docket No. DRU-02-2. The ruling in Docket No. DRU-02-2 is that a utility may not refuse to reconnect a LIHEAP customer who has moved to a new residence and the Board has made no ruling that a customer who is involuntarily disconnected and subsequently becomes LIHEAP eligible must be reconnected. The ruling in Docket No. DRU-02-2 can best be understood as being limited to the situation described therein.

The sentence added to paragraph 3.c is consistent with Iowa Code § 476.20(2) and the Board's existing rules. The statute states in relevant part as follows:

> If the notice of pending disconnection applies to a residence, the written statement shall advise that the disconnection does not apply from November 1 through April 1 for a resident who is a *"head of household,"* as defined by law, and who has been certified to the public utility by the local agency which is administering the low income home energy assistance program and weatherization assistance program as being eligible for either the low income energy assistance program or weatherization assistance program, and that if such a resident resides within the serviced residence , the customer should promptly have the qualifying resident notify the local agency which is administering the low income

> energy assistance program or the weatherization assistance program.

Subparagraphs 19.4(15)"h"(5) and 20.4(15)"h"(6) state that "If a utility is informed that the customer's household may qualify for winter energy assistance or weatherization funds, there shall be no disconnection of service for 30 days from the date of application to allow the customer time to obtain assistance. Disconnection shall not take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the community action agency as eligible for either the low-income home energy assistance program or weatherization assistance program."

The statute provides protection from disconnection for a customer who has been notified that service will be disconnected during the period November 1 through April 1 and who has been certified to the public utility as LIHEAP eligible. Subparagraphs 19.4(15)"h"(5) and 20.4(15)"h"(5) then provide that a customer who receives a disconnection notice, after notifying the utility that the customer may be eligible for assistance, has 30 days in which to obtain certification from a community action agency. This 30-day delay of disconnection is the mechanism by which a customer who may be eligible for LIHEAP, but who is not yet certified, can maintain service while obtaining certification

Notification of eligibility and certification are both required prior to disconnection for the customer to be protected. It would not be reasonable to require a utility to reconnect a customer who chooses to wait for disconnection before

seeking assistance. The customer is responsible for understanding the urgency of taking the necessary action to maintain service. The standard notice provides the customer with the rights and remedies to avoid disconnection, not to have service reconnected.

B. Scope Of Rule Making

The Board finds that the inclusion of the last sentence in paragraph 3.c in the standard notice is a permissible variance from the initial proposed amendments. The last sentence is within the scope of the subject matter announced in the "Notice of Intended Action" and is in character with the issues raised in the notice. The proposed amendments to the standard notice are designed to clarify the description of a customer's rights and remedies once the customer receives the disconnection notice. The last sentence in paragraph 3.c rephrased and added language that was in the existing standard notice.

The existing standard notice provides in relevant part as follows:

> You may be eligible for low-income energy assistance or weatherization funds. If you tell us that you may qualify for energy assistance, you will be given 12 days from the date on which the disconnection notice was mailed to apply to the local community action agency. <u>You must apply prior to the disconnection date</u>. If the community action agency certifies you as being eligible for either low-income energy assistance or weatherization assistance within 30 days from the date of your application, then your service cannot be disconnected between November 1 and April 1. (Emphasis added.)

The adopted standard notice clarifies the requirements for notifying the utility and obtaining certification but does not change any of the substantive rules. The

existing standard notice contains a similar provision to the last sentence in paragraph 3.c. The language in paragraph 3.c is just clearer.

The last sentence is also a logical outgrowth of the contents of the proposed amendments, since it reflects language already in the existing notice. The Board finds that additional notice and comment proceedings are not necessary since the language in the last sentence in paragraph 3.c makes no substantive change in the Board's rules and reflects language in the existing standard notice. Finally, the language in the last sentence in paragraph 3.c is consistent with Iowa Code § 476.20. Thus, the language is a permissible variance from the proposed rule making.

The discussion of the comments made by Consumer Advocate and the Board's decision provide the statement of principal reasons for and against the adoption of the last sentence in paragraph 3.c. The Board has also found that the last sentence in paragraph 3.c is a permissible variance from the proposed rule making. Based upon the discussion and decisions above, the Board has determined that it is not necessary to revise the "Order Adopting Amendments" and it is not necessary to defer the effective date of the adopted amendments to 199 IAC 19.4(15)"h"(3) and 20.4(15)"h"(3).

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The Utilities Board makes the above statement of principal reasons for and against adoption of the last sentence in paragraph 3.c of the standard notice in 199 IAC 19.4(15)"h"(3) and 20.4(15)"h"(3) published in IAB Vol. XXVI, No. 3 (8/6/03) pp. 229-234, as ARC 2681B.

2. The Board denies Consumer Advocate's request to defer the effective date of the amended standard notice.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 5th day of September, 2003.